

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland  
December 3, 1993

In the Matter of:	x
Karen Lewis, President	x
Board of Directors	x
Lake Hallowell Homeowners Assoc.	x
17936 Dumfries Circle	x
Olney, MD 20832,	x
Complainant	x
	x
Vs.	x
	x
Thomas and Rita McLister, Owners	x
17931 Dumfries Circle	x
Olney, MD 20832	x
Respondents	x

Case No. 166-G

Decision and Order

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland (hereinafter the "Commission"), for hearing, on October 27, 1993, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the duly appointed hearing Panel having considered the testimony and evidence of record, finds, determines and orders as follows:

On April 7, 1992, Jeffrey Van Grack, attorney for Lake Hallowell Homeowners Association, Inc. (hereinafter the "Complainant") filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that Thomas and Rita McLister, owners of 17931 Dumfries Circle (hereinafter the "Respondents") installed a wooden deck on their property that exceeded the dimensions approved by the Architectural Control Committee on May 7, 1991, in violation of Article V of the Declaration of Covenants, Conditions, and Restrictions.

The Respondents contend that the change in the depth of their deck, from the approved depth of 16 feet to 20 feet deep, was necessary in order to comply with Montgomery County Building Regulations and to pass the required code inspection, and therefore, should be allowed to remain "as built". The Respondents further contended that Case No. 166-G should be dismissed because the Complainant failed to approve or disapprove their supplementary request for a special exception within 45 days from the alleged date of submission, on June 28, 1992.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e) of the County Code on August 4, 1993. The Commission determined that it was a matter within the Commission's jurisdiction and the hearing date was scheduled.

FINDINGS OF FACT

Based on the testimony and other evidence of record, the Panel makes the following findings:

1. Both Complainant and Respondent were represented by counsel. Walter Lee represented the Complainant and Patrick F. McLister represented the Respondents.
2. Pursuant to Article V of the Declaration of Covenants, on May 7, 1991, Thomas and Frieda McLister, residents of Lake Hollowell Homeowners Association, received approval to build an upper level deck with dimensions of 14 feet high by 22 feet wide by 16 feet deep.
3. On June 13, 1991, Kevin Abbott, management agent for Lake Hollowell Homeowners Association observed that the deck had been substantially completed. He further observed that the deck did not appear to conform to the approved documents and that it encroached too far into the common areas. He requested the Respondents to provide as-built drawings of the deck. These documents were provided on June 28, 1991, by Mr. Wilcox of On Deck, Inc., and showed that the deck had been constructed with a depth dimension of 20 feet.
4. The Respondents were requested to attend a hearing with the Board of Directors scheduled for September 16, 1991 to discuss the existing violation.
5. Pursuant to Article VII(1)(a) of the By-Laws, the Board of Directors is empowered to enforce the rules and regulations of the Association, as well as to enforce a violation of the Declaration of Covenants.
6. During the hearing before the Board of Directors on September 16, 1991, the Respondents made an oral request for an exception to the plans which had been approved by the Association's Architectural Control Committee.
7. The Respondents were advised in writing on November 20, 1991, that the Board had denied their oral request for a special exception to the approved plans.
8. On November 30, 1991, the Respondents, for the first time, made a formal written request for approval for alteration and modification of the constructed deck. This formal request was submitted on or about December 10, 1991. The Respondents were notified within 45 days that the formal request for alteration was denied and that the Respondents were required to bring their deck into compliance to the originally approved drawings by January 24, 1992.

9. The Respondents refused to comply with the directive of the Board and the Board instituted the subject action with the Commission to enforce compliance.

#### CONCLUSIONS OF LAW

The Commission finds that Article V of the Declaration of Covenants empowers the Board of Directors to appoint an Architectural Control Committee of three to five persons to approve submissions of drawings and plans for modifications to the exterior structures of dwellings and constructed buildings and that such approvals are enforceable pursuant to the rules and regulations of the Association. The Respondents built an exterior addition to their home (a deck) which failed to conform to the plans and drawings approved by the Association's Architectural Control Committee. Respondents contended at the hearing before this Commission that the submission of the as-built drawings on or about June 28, 1991 by Mr. Wilcox of On Deck, Inc., to Kevin Abbott, manager of Lake Hallowell Homeowners Association, was a request for approval by the Architectural Control Committee pursuant to Article V of the Declaration of Covenants which would trigger a 45 day response period. We specifically find that the submission of the as-built plans (Exhibit 15e, p. 109) was not an application for approval of a modification pursuant to the Declaration and Covenants, but rather was a response to Mr. Abbott's inquiry regarding the dimensions of the deck.

The Commission finds the Board of Directors properly and fairly considered the McLister deck in determining that it did not conform to the approved plans and constituted a violation as constructed, and further finds the violation to be material and disruptive to the harmony and design of the community the Board desires to maintain. The Board properly exercised its authority in determining whether to approve the deck, in a manner consistent with its governing documents, and acted within its business judgment in finding a violation. Further, the Commission finds the Board acted in a consistent manner with regard to enforcement procedures of the Association in requiring the Respondents to bring the deck into compliance with the approvals given for its construction.

#### Order

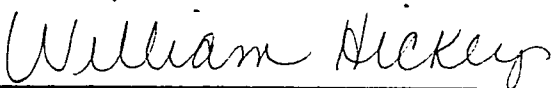
In view of the foregoing, and based upon the preponderance of the evidence of record, the Commission orders that:

1. The decision of the Complainant Board of Directors regarding the deck was proper, and that the Respondents shall bring the deck into compliance so that the depth of the deck structure extends no more than 16 feet from the exterior wall of the Respondent's house.

2. That the Respondents shall have 60 days in which to perform the necessary construction.

The foregoing was concurred in by panel members Glancy, Huson, and Hickey.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

  
William Hickey, Panel Chair  
Commission on Common  
Ownership Communities

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